

46 Am. Jur. 2d Judges § 83

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Judges

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IX. Disqualification to Act in Particular Case

A. Disqualification to Act in Particular Case, in General

§ 83. Statutes governing disqualification of judge—Construction of statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  39, 40

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[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification, 10 A.L.R.2d 1307](#)

Some jurisdictions consider that statutes providing for the disqualification of judges must be strictly construed.¹ Under a theory of strict construction, all grounds for recusing a judge are specified in the appropriate statute, which must then be strictly construed to hold that a mere appearance of impropriety, not statutorily listed, cannot be a basis for recusal.²

On the other hand, other jurisdictions consider that disqualification statutes must be construed liberally³ to promote and maintain public confidence in the judicial system⁴ and to permit, rather than prevent, the substitution of judges.⁵ This interpretation is premised on the theory that such a statute, although in derogation of the common law, is remedial and therefore should be given a liberal construction so as to effect the intent of the legislature,⁶ and that a liberal interpretation is required to protect the guarantee of a fair and impartial trial that is implicit in our legal system.⁷

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Footnotes

- 1 Lopez v. Kearney ex rel. County of Pima, 222 Ariz. 133, 213 P.3d 282 (Ct. App. Div. 2 2009); People in
Interest of A.L.C., 660 P.2d 917 (Colo. App. 1982); Pierce v. Charity Hosp. of Louisiana at New Orleans,
550 So. 2d 211 (La. Ct. App. 4th Cir. 1989), writ denied, 551 So. 2d 1341 (La. 1989); Gerety v. Demers,
1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (1978).
- 2 Pierce v. Charity Hosp. of Louisiana at New Orleans, 550 So. 2d 211 (La. Ct. App. 4th Cir. 1989), writ
denied, 551 So. 2d 1341 (La. 1989).
- 3 Le Louis v. Superior Court, 209 Cal. App. 3d 669, 257 Cal. Rptr. 458 (5th Dist. 1989); King v. State, 246
Ga. 386, 271 S.E.2d 630, 16 A.L.R.4th 545 (1980); Bowman v. Ottney, 2015 IL 119000, 400 Ill. Dec. 640,
48 N.E.3d 1080 (Ill. 2015); State ex rel. Wesolich v. Goeke, 794 S.W.2d 692 (Mo. Ct. App. E.D. 1990).
- 4 Le Louis v. Superior Court, 209 Cal. App. 3d 669, 257 Cal. Rptr. 458 (5th Dist. 1989); State ex rel. Wesolich
v. Goeke, 794 S.W.2d 692 (Mo. Ct. App. E.D. 1990).
- 5 King v. State, 246 Ga. 386, 271 S.E.2d 630, 16 A.L.R.4th 545 (1980); Bowman v. Ottney, 2015 IL 119000,
400 Ill. Dec. 640, 48 N.E.3d 1080 (Ill. 2015); State ex rel. Horton v. House, 646 S.W.2d 91 (Mo. 1983).
- 6 King v. State, 246 Ga. 386, 271 S.E.2d 630, 16 A.L.R.4th 545 (1980).
- 7 People v. Flowers, 47 Ill. App. 3d 809, 8 Ill. Dec. 268, 365 N.E.2d 506 (1st Dist. 1977).

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